

FEB 26 2002

BEFORE THE FEDERAL ELECTION COMMISSION

FEDERAL ELECTION COMMISSION

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**SENSITIVE**

MUR 4850

In the matter of

Committee to Re-Elect Vito Fossella  
and Anthony J. Maltese, as treasurer

Rep. Vito Fossella

Frank Cretella

Jeanne Cretella

GENERAL COUNSEL'S REPORT #2

**I. ACTIONS RECOMMENDED**

Find no reason to believe that Representative Vito Fossella violated any provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). take no further action and close the file regarding respondents Frank Cretella and Jeanne Cretella

Find reason to believe that

William McDaid, Aldo Puletti, Carmine Ragucci, and Anthony Santo violated 2 U.S.C. § 441a(a)(1)(A), but take no further action, close the file as to these contributors and send an admonishment letter to each of them.

**II. BACKGROUND**

The complainant alleged that Representative Vito Fossella and his principal campaign committee, the Fossella Committee, and Anthony J. Maltese, as treasurer, accepted excessive contributions over the course of four (4) separate elections in 1997 and 1998: (1) the certification

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1 of Fossella's nomination by the appropriate Republican committee(s) for the 13<sup>th</sup> Congressional  
2 District in the state of New York on September 16, 1997 (hereinafter referred to as the  
3 September 16, 1997 Primary Election);<sup>1</sup> (2) the 1997 Special/General Election held on  
4 November 4, 1997; (3) the 1998 Primary Election held on September 15, 1998; and (4) the  
5 1998 General Election held on November 3, 1998.

6 On June 20, 2000, the Commission found reason to believe ("RTB") that the Fossella  
7 Committee violated 2 U.S.C. §§ 434(b)(3)(a) and 441a(f), 11 C.F.R. §§ 103.3(a), and  
8 110.1(b)(3)(i). On June 20, 2000, the Commission also found RTB that respondents Jeanne  
9 Cretella and Frank Cretella violated 2 U.S.C. § 441a(a)(1)(A). In addition, the Commission  
10 authorized the Audit Division to perform an analysis of the deposit and reporting of contributions  
11 by the Fossella Committee during the 1997 - 1998 election cycle. See 2 U.S.C. § 437g(a)(2).  
12 On July 2, 2001, the Audit Division presented to this Office the results of its audit review on the  
13 Fossella Committee. Attachment 1.

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<sup>1</sup> Prior to the commencement of the Audit Division's analysis, the Fossella Committee argued that the 1997 Primary Election occurred at a time later than the September 16, 1997 date relied upon by this Office and the Audit Division. This Office treated September 16, 1997 as the primary date in the First General Counsel Report, given that the New York State Board of Elections set the deadline for political parties to file certificates of nomination on this date. The Fossella Committee asserted that the appropriate primary date should have been October 15, 1997, citing additional nomination dates of other independent parties (Conservative, Right to Life, Independence).

This Office requested documentation demonstrating that October 15, 1997 is the proper date. The Fossella Committee never provided, however, any such documentation. Regardless of which date is applied, the Audit Division found that the Fossella Committee accepted excessive contributions. In fact, establishing October 15, 1997 date as the primary date would reveal additional excessive contributions that would not exist under the September 16, 1997 date analysis. For example, applying Gary Anguili's \$500 contribution made on October 15, 1997 to the 1997 Primary Election would increase his aggregate total of 1997 Primary Election contributions to \$1,500, \$500 over the allowable limit. The Fossella Committee would have excessive/post-primary contributions in the amount of \$78,450, an increase of \$1,039.56 from the \$77,410.44 found by the Audit Division.

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**III. ANALYSIS****A. Rep. Vito Fossella**

The complaint named Representative Vito Fossella as a respondent. However, the First General Counsel's Report inadvertently made no recommendation as to his involvement in this matter. A review of currently available information does not indicate that Representative Vito Fossella violated any provision of the Act concerning MUR 4850. Accordingly, this Office recommends that the Commission find no reason to believe that Representative Vito Fossella violated any provision of the Act and close the file as to this respondent.

**B. Jeanne and Frank Cretella Contributions**

The Commission found RTB that Jeanne Cretella violated 2 U.S.C. § 441a(a)(1)(A) by contributing \$1,500 to the Fossella Committee for use in the 1997 General Election: (1) on October 15, 1997, a \$500 contribution; and (2) on October 20, 1997, a \$1,000 contribution. The Audit Division has found, however, that Jeanne Cretella made only a \$1,000 undesignated contribution to the Fossella Committee as shown in Table 1 below.

**TABLE 1: CONTRIBUTIONS TO THE FOSSELLA COMMITTEE**  
**JEANNE CRETELLA**

<b>COMPLAINT: ALLEGED CONTRIBUTION</b>	<b>JEANNE CRETELLA RESPONSE</b>	<b>FOSSELLA COMMITTEE AMENDED 12 DAY PRE -SPECIAL REPORT</b>	<b>AUDIT DIVISION FINDINGS</b>
Two Contributions:  1) On October 15, 1997, a \$500 contribution for use in the 1997 General Election;  2) On October 20, 1997, a \$1,000 contribution for use in the 1997 General Election.	In 1997 a \$1,000 contribution (no date specified) for use in the 1997 General Election.	Two Contributions:  1) On October 15, 1997, a \$500 contribution for use in the 1997 Primary contribution;  2) On October 27, 1997, a \$1,000 contribution for use in the 1997 General Election.	On October 10, 1997, a \$1,000 (undesignated) contribution.

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Therefore, this Office recommends that the Commission take no further action against Mrs. Cretella and close the file as to this respondent.

The Commission also found RTB that Frank Cretella violated 2 U.S.C. § 441a(a)(1)(A) by contributing \$2,000 to the Fossella Committee for use in the 1997 Primary Election. In its audit of the Fossella Committee, the Audit Division obtained copies of two canceled checks that Mr. Cretella endorsed to the Fossella Committee: (1) on July 7, 1997, a \$2,000 check on which the memo line to the left of his signature states "Primary and General Elections;" and (2) on September 9, 1997, a \$500 undesignated contribution. As shown in Table 2 below, the Audit Division's findings contrast Frank Cretella's response to the complaint and information provided in the Fossella Committee's amended 12 Day Pre-Special Report.<sup>2</sup>

**TABLE 2: CONTRIBUTIONS TO THE FOSSELLA COMMITTEE**

**FRANK CRETELLA**

COMPLAINT: ALLEGED CONTRIBUTION	FRANK CRETELLA RESPONSE	FOSSELLA COMMITTEE AMENDED 12 DAY PRE- SPECIAL REPORT	AUDIT DIVISION FINDINGS
Not mentioned in the complaint.	In 1997, a \$500 contribution (no date specified) for use in the 1997 General Election.	Two Contributions:  1) On September 15, 1997, a \$1,000 contribution for use in the 1997 Primary Election;  2) On September 15, 1997, a \$1,000 contribution for use in the 1997 Primary Election.	Two Contributions:  1) On July 7, 1997, a \$2,000 check for use in the 1997 Primary and General Elections;  2) On September 9, 1997, a \$500 undesignated contribution. (Excessive by \$500)

<sup>2</sup> Although the Fossella Committee recorded in its database receipt of Frank Cretella's July 7, 1997 \$2,000 contribution for use in the 1997 Primary and General Elections, its disclosure reports do not reflect the contribution. Instead, the Fossella Committee's 12 Day Pre Special Report discloses two \$1,000 contributions for use in the 1997 Primary Election as noted in Table 2 above.

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1 Mr. Cretella did not submit a formal response to the RTB finding despite efforts from this  
2 Office to obtain additional information. In telephone discussions, Mr. Cretella could not explain  
3 making an additional \$500 contribution to the Fossella Committee; he intimates only that he  
4 inadvertently made a \$500 contribution, unaware that he was over the contribution limit. He  
5 confirmed, however, that the Fossella Committee did not make any attempts to obtain either a re-  
6 attribution or a re-designation from him, nor did the Fossella Committee refund the \$500  
7 contribution. See 11 C.F.R. §§ 110.1(b)(5) and 103.3(b)(3).

8 Mr. Cretella's September 9, 1997 \$500 check to the Fossella Committee exceeded the  
9 contribution limit because he had already contributed \$1,000 for use in the 1997 Primary  
10 Election and \$1,000 to the 1997 General Election on July 7, 1997. See 2 U.S.C. § 441a. The  
11 September 9, 1997 check, which was not designated for any particular election, was made before  
12 the 1997 Primary Election. Thus, the September 9, 1997 \$500 contribution could be applied only  
13 to the 1997 Primary Election. See 11 C.F.R. § 110.1(b)(2)(ii). As such, Mr. Cretella appears to  
14 have made an excessive contribution to the Fossella Committee for the 1997 Primary Election in  
15 the amount of \$500.

16 Given the small amount of the excessive contribution, however, this Office recommends  
17 that, in the proper consideration of its priorities and limited resources, *see Heckler v. Chaney*,  
18 470 U.S. 821, 831 (1985), the Commission take no further action against Frank Cretella, close  
19 the file as to this respondent and send an admonishment letter.

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**C. Committee to Re-Elect Vito Fossella**

**1. Excessive and Post-Primary Contributions / Audit Review and Analysis**

The Commission found RTB that the Fossella Committee violated 2 U.S.C § 441a(f) and 11 C.F.R. § 110.1(b)(3)(i) by accepting excessive and post-primary (in the absence of net debts outstanding) contributions. The Audit Division confirmed that the Fossella Committee accepted numerous excessive contributions. Specifically, the Audit Division identified ninety – six (96) apparent excessive contributions from individuals totaling \$66,210, as well as three (3) apparent excessive contributions totaling \$10,200 from PACs and other political committees. In addition, the Audit Division identified one contribution received after the primary but designated for the primary (i.e., “post-primary”); the Fossella Committee was not entitled to accept this contribution because it did not have net debts outstanding. Specifically, after the September 16, 1997 Primary date, on October 1, 1997, the Fossella Committee received a \$1,000 contribution designated for the 1997 Special Primary Election from H.J. Hyde for Congress. Combining the \$66,210 in apparent excessive contributions, \$10,200 in excessive contributions from PACs and other political committees, and the \$1,000 post-primary contribution, the grand total of excessive and post-primary contributions that were not refunded is \$77,410.

Of the 96 excessive contributions, the Audit Division found that the Fossella Committee

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received 44 undesignated contribution checks, each in the amount of \$2,000, from individuals; fifteen (15) of these contributions were made after the primary election. In addition, it appears that the Fossella Committee received eight (8) undesignated *prima facie* excessive contributions under \$2,000.<sup>3</sup>

The remaining forty-four (44) contributions exceed the limit when aggregated with other contributions from the same contributor. The contributions of Carmine Ragucci as shown in Table 3 below illustrate this problem.

**TABLE 3: CONTRIBUTIONS TO THE FOSSELLA COMMITTEE**

**CARMINE RAGUCCI (1997-1998)**

1997 PRIMARY ELECTION	1997 GENERAL ELECTION	1998 PRIMARY ELECTION	1998 GENERAL ELECTION
Two Contributions:  1) On June 10, 1997, a \$1,000 contribution;  2) On September 9, 1997, a \$500 contribution (Excessive by \$500).	On September 28, 1997, a \$500 contribution.	Three Contributions:  1) On November 25, 1997, a \$1,000 undesignated contribution (after the 1997 General Election);  2) On February 25, 1998, a \$1,000 contribution (Excessive by \$1,000);  3) On October 25, 1998, a \$500 contribution (designated for 1998 Primary -- Excessive by an additional \$500).	On October 25, 1998, a \$500 contribution.

As Table 3 demonstrates, Ragucci has made excessive contributions for both the 1997 Primary Election and 1998 Primary Election. Ragucci made an excessive contribution for the 1997 Primary Election on September 9, 1997 when he contributed \$500 to the Fossella

<sup>3</sup> The following individuals made *prima facie* excessive contributions under \$2,000: Benedict Occhiogros (\$1,900); Joseph Sangimino (\$1,500); Salvatore Tirro (\$1,500); Thomas Tirro (\$1,500); Joanne Trataros (\$1,500); John Sipp (\$1,300); Randy Lee (\$1,250); and John Heinbockel (\$1,200).

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Committee, having already reached the limit when he made a \$1,000 contribution on June 10, 1997. See 2 U.S.C. § 441a(a)(1). Ragucci's contributions for the 1998 Primary Election are excessive based on two factors. First, Ragucci's November 25, 1997 \$1,000 undesignated contribution was made after the date of the November 4, 1997 Special General Election. Thus, the contribution would be applied to the next election, which in this case was the 1998 Primary Election. See 11 C.F.R. § 110.1(b)(2)(ii). Second, given that the November 25, 1997 \$1,000 contribution was applied to the 1998 Primary Election, the Fossella Committee was not entitled to receive Ragucci's February 25, 1998 \$1,000 contribution for use in the 1998 Primary Election.<sup>4</sup> Further, because Ragucci had already exceeded the limit for the 1998 Primary Election, the Fossella Committee was not entitled to receive the October 25, 1998 \$500 contribution designated for the same election. This type of situation occurred in the remainder of excessive contributions received by the Fossella Committee. As such, the Fossella Committee was required to perform the same functions that it faced when it received *prima facie* excessive contributions: either obtain a written re-designation or re-attribution within sixty (60) days, or refund the excessive contribution. See 11 C.F.R. § 103.3(b)(3).

It appears unlikely that such action took place, based on two considerations. First, the Fossella Committee did not produce any documents or other evidence proving that the Fossella Committee ever obtained a proper re-designation or re-attribution of the excessive contributions at issue.<sup>5</sup> Second, the Fossella Committee apparently accepted the contributions and did not

<sup>4</sup> There is no information provided by the Fossella Committee demonstrating that it obtained a proper re-designation or re-attribution of this contribution.

<sup>5</sup> The Audit Division also found that, although the Fossella Committee did not deposit the excessive contributions into a separate account, it maintained sufficient funds during most of calendar years 1997 and 1998 to refund the excessive contributions. Attachment 1 at 7.

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1 provide refunds to any of the contributors. In fact, the Fossella Committee's disclosure reports  
2 disclose that it accepted all of the contributions. Thus, the Fossella Committee has submitted no  
3 information rebutting the evidence that it accepted \$77,410.44 in excessive and post-primary  
4 contributions in violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(b)(3)(i).

5 However, this Office believes that further action  
6 against most of the contributors identified by the Audit Division as having made excessive  
7 contributions to the Fossella Committee would not be appropriate, given that each contributed  
8 less than \$2,000 for each election. Accordingly, this Office does not recommend that the  
9 Commission make findings against contributors who donated less than twice the contribution  
10 limitation, i.e. less than \$2,000.

11 This Office has, however, identified four individuals who have contributed more than  
12 twice the contribution limitation: William McDaid (\$2,250); Aldo Puletti (\$2,100); Carmine  
13 Ragucci (\$2,500); and Anthony Santo (\$2,500).<sup>6</sup> Accordingly, this Office recommends that the  
14 Commission find reason to believe that these individuals violated 2 U.S.C. § 441a(a)(1)(A), but  
15 take no further action, close the file as to these contributors, send an admonishment letter to each  
16 of them, and approve the attached Factual and Legal Analyses.

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<sup>6</sup> Because these contributors were discovered as a result of the Audit Division review, they have been internally generated for purposes of this matter.

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VI. RECOMMENDATIONS

1. Find no reason to believe that Rep. Vito Fossella violated any provision of the Act and close the file as to this respondent.
2. Take no further action regarding Frank Cretella, close the file as to this respondent, and send an admonishment letter.
3. Take no further action regarding Jeanne Cretella, and close the file as to this respondent.
- 4.
- 5.
6. Find reason to believe that William McDaid, Aldo Puletti, Carmine Ragucci, and Anthony Santo violated 2 U.S.C. § 441a(a)(1)(A), but take no further action, close the file as to these contributors and send admonishment letters.

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9. Approve the appropriate letters.

Lawrence H. Norton  
General Counsel

Date

2/26/02

BY:

Rhonda J. Vosdingh  
Rhonda J. Vosdingh  
Associate General Counsel

Staff Assigned: Roy Q. Lockett

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